

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIANE MURACH and
MELISSA AUBUCHON,
Plaintiffs

v.

J'S FOUR, INC. and
JANET ARSENAULT,
Defendants

C.A. No. 05-11265 MLW

**DEFENDANTS' MOTION TO DISMISS COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Now come defendants J's Four, Inc. and Janet Arsenault in the above matter, and hereby move that this Court dismiss the Complaint in this action pursuant to Fed. R. Civ. P. 12(b)(6).

As grounds for this motion, defendants state as follows:

1. The Complaint fails to allege the basic elements necessary to make out a prima facie case of retaliation under the Fair Labor Standards Act, 29 U.S.C. §215, requiring dismissal of Count I;
2. Plaintiffs' state common law claims are superseded by the more specific statutory remedies provided by the FLSA, and therefore Count II should be dismissed; and
3. The Complaint fails to allege any acts against Janet Arsenault individually outside of her capacity as an employee, director, or shareholder of J's Four, Inc., and as such, all claims against her individually should be dismissed.

In further support of this motion, defendants respectfully direct the Court's attention to the memorandum of law attached hereto.

REQUEST FOR ORAL ARGUMENT

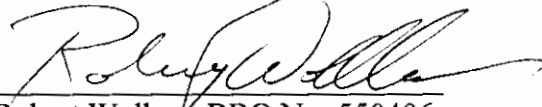
Pursuant to Rule 7.1 (D) of the Local Rules of this Court, defendants J's Four, Inc. and Janet Arsenault respectfully request a hearing on the instant motion.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to Rule 7.1(A)(2) of the Local Rules of this Court, the undersigned counsel, hereby certifies that he has conferred in good faith with counsel for the plaintiffs in an effort to resolve or narrow the issues raised in the instant motion.

Respectfully submitted,

J'S FOUR, INC. and JANET ARSENAULT
By their attorney,



Robert Wolkon, BBO No. 550406
WOLKON & PASCUCI, LLP
One Beacon Street, Suite 1320
Boston, MA 02108
(617) 523-8400

Dated: July 18, 2005

CERTIFICATE OF SERVICE

I, Robert Wolkon, hereby certify that I have caused a copy of the foregoing document to be served upon Scott A. Lathrop, Esq., Scott A. Lathrop & Associates, 122 Old Ayer Road, Groton, MA 01450 via telefax and first-class mail this 18th day of July, 2005.



Robert Wolkon